

### Election/Restriction

In response to a restriction requirement, Applicants have canceled claims 8-14 without prejudice. In response to an election of species requirement, Applicants have elected the species defined by pending claim 38. Applicants acknowledge the Examiner's finding that the elected species is free of the prior art. It is in light of this finding that claims 39-49 are added.

### Rejections Under 35 U.S.C. §112

Claims 4-7 and 38 were rejected as being vague and indefinite on various grounds, each of which is addressed in order below.

[1] Use of the term "lower" in connection with various functional groups

Applicants refer to pages 62-63 of the specification, which states:

"Lower alkyl" includes alkyl groups of from 1 to 8 carbon atoms. Examples of lower alkyl groups include methyl, ethyl, propyl, isopropyl, butyl, s- and t-butyl, pentyl, hexyl, octyl, c-propyl, c-butyl and the like. "Lower cycloalkyl" includes cycloalkyl groups of from 3 to 8 carbon atoms. Examples of lower cycloalkyl groups include c-propyl, c-butyl, c-pentyl, 2-methylcyclopropyl, cyclopropylmethyl, and the like.

[2] Use of the term "substituted" in connection with various functional groups

Applicants refer to page 64 of the specification which states:

"Substituted loweralkyl" means lower alkyl substituted with 1-3 alkoxy, carboalkoxy, carboxamido, di-loweralkylamino, aryl, substituted aryl, heteroaryl....

"Substituted aryl" means aryl substituted with 1-3 halo, loweralkyl, alkoxy, aryl, S-loweralkyl, alkylsulphonamido, arylsulphonamido, or sulfamoyl. ...

“Substituted heteroaryl” means heteroaryl substituted with 1-3 halo, loweralkyl, alkoxy, aryl, S-loweralkyl, alkylsulphonamido, arylsulphonamide, or sulfamoyl.

[3] Use of the abbreviation “Phe” in the definition of R<sup>1</sup>

Applicants refer to pages 61-62 of the specification, wherein a list of abbreviations is provided. Specifically, at page 62, line 18, “Phe” is defined as “phenylene”.

[4] Use of the recitation “are taken together” in connection with various substituents

The Examiner has rejected the use of the recitation “are taken together” in the definition of certain substituents appearing in formula II. The definition of substituents R<sup>4</sup> and R<sup>5</sup>, for example, states that “R<sup>4</sup> and R<sup>5</sup> are *each independently . . . or R<sup>4</sup> and R<sup>5</sup> taken together are . . .*” The same language is used in the definition of substituents R<sup>6</sup> and R<sup>7</sup>. It is the position of the Examiner that it is “unclear how each of the independently discrete functional group moieties defined in the claims as the variables R<sup>4</sup>, R<sup>5</sup>, R<sup>6</sup> or R<sup>7</sup> are ultimately “taken together” or linked to form the bridging functional group moieties defined in the claims after the term “taken together.”

Applicants point out that, as is well recognized in the art, the recitation “X and Y taken together are” does not mean that the independently discrete functional group moieties defined as independent variables X and Y, are linked together to form the bridging functional groups defined after the recitation, but rather that the substituents X and Y taken together as a variable X/Y form the bridging functional group moieties defined after the recitation.

In accordance with the claims, substituents R<sup>4</sup> and R<sup>5</sup> (or R<sup>6</sup> and R<sup>7</sup>) are each an independent mono-valent substituent **OR** are taken together to form a single di-valent moiety,

$R^4/R^5$ , chosen from a list of bridging functional moieties. In the latter instance,  $R^4$  and  $R^5$  are not independently discrete functional moieties "linked" to form one of the enumerated bridging moieties, but rather  $R^4$  and  $R^5$  are taken together as  $R^4 / R^5$ , which is itself a di-valent bridging moiety as defined in the claims.

[5] Use of the recitations "the substituents" and "the heteroatom" in the claims.

The claims have been amended to ensure proper antecedent basis for these recitations. Applicants do point out however, that the recitations "the heteroatoms" and "the substituents" referred to in the definition of  $R^8$  in claim 7 refer to "the heteroatoms" and "the substituents" enumerated in the definition of  $R^8$  in claim 4. The recitation of "the heteroatoms" in the definition of  $R^{12}$  in claim 7 refers to "the heteroatoms" enumerated in the definition of  $R^{12}$  in claim 4.

In light of the foregoing amendments and remarks, Applicants believe the claims to satisfy the requirements of §112, second paragraph, and respectfully request that the rejections be withdrawn.

#### Rejections Under 35 U.S.C. §102(b)

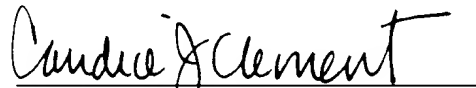
Claim 4 was rejected as being anticipated by each of Jennings *et al.* (Reference CG on Applicants' Supplemental Form PTO1449), USP 5,268,386, and its EP counterpart, 0415566A1 (collectively, "Harada *et al.*"). The rejection relies upon compounds 24 and 25 of Jennings *et al.* and compounds 13-16 of Harada *et al.* (With regard to compound 24 of Jennings *et al.*, Applicants point out that this structure would require one of  $R^1$  or  $R^2$  of Applicants' formula II to be methoxy, a choice not claimed by Applicants.)

Claim 4, and by dependency, claims 5-7 and 38, have been amended to cancel subject matter required by each of the compounds cited in the Office Action as anticipating Applicants'

genus. New claims 39-49 (either directly or through dependency on claim 4) also exclude subject matter required by the cited compounds; no new matter has been added. As neither Jennings *et al.* nor Harada *et al.* disclose compounds encompassed by the claims as now pending, Applicants respectfully request that the §102(b) rejections be withdrawn.

There being no further outstanding issues, claims 4-7 and 38-49, are believed in condition for allowance and such action is courteously requested.

Respectfully submitted,



Candice J. Clement

Attorney for Applicants

Registration No. 39,946

HESLIN & ROTHENBERG, P.C.

5 Columbia Circle

Albany, New York 12203

Telephone: (518) 452-5600

Facsimile: (518) 452-5579

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